

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:99CV178-MU-02

JOHN FRANK BOWEN,)
Petitioner,)
)
)
v.) ORDER
)
CARLA O'KONEK, Supt.,)
Respondent.)
)

THIS MATTER comes before the Court on the petitioner's "Motion To Vacate Orders Entered In A Fraud Upon The Court Under Rule 60(b)(6) And Enlarge Time To File Any Required Notice Of Appeal" (document # 71), signed by the petitioner on November 10, 2005, and filed with this Court on November 15, 2005.

As best as can be determined, by the instant Motion the petitioner is seeking both to amend his Petition for a Writ of Habeas Corpus, and to obtain an extension of time in which to give his notice of appeal of this Court's denial of that same Habeas Corpus Petition. Suffice it to say, however, inasmuch as this Court did, in fact, deny and dismiss the petitioner's Habeas Petition by its Order and Judgment of October 14, 2005, the petitioner's request to amend that Petition must be denied.

On the other hand, because the petitioner has submitted the instant request for an extension of time within thirty days of the date that the Court entered its final Judgment, the Court

will construe such request as the petitioner's actual notice of appeal. Further, the Court will direct the Clerk to enter the petitioner's notice of appeal on the record, so that he may pursue his appeal at the Fourth Circuit Court of Appeals. However, the Court will also instruct the Clerk of this Court to advise the Clerk of the Fourth Circuit Court of Appeals that the petitioner has not yet paid the \$255.00 appellate filing fee.

NOW, THEREFORE, IT IS ORDERED:

1. That the petitioner's Motion to Amend his Petition is **DENIED**;
2. That the petitioner's request for an extension of time in which to give his notice of appeal shall be construed as his actual notice of appeal;
3. That the Clerk of this Court shall enter the petitioner's notice of appeal on the record as of November 10, 2005, and shall transmit such notice to the Clerk of the Fourth Circuit Court of Appeals; and
4. That the Clerk of this Court shall further advise the Clerk of the Fourth Circuit Court of Appeals that the petitioner has not yet paid the \$255.00 filing fee which is applicable to this matter.

SO ORDERED.

Signed: December 8, 2005



A handwritten signature in black ink, appearing to read "Graham C. Mullen". The signature is fluid and cursive, with a horizontal line drawn underneath it.

Graham C. Mullen
Chief United States District Judge

